

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

CMC FOOD, INC. and MICHAEL CULLEY,

*Plaintiffs,*

v.

MITLITSKY EGGS, LLC, RICHARD  
MITLISKY, GIROUX'S POULTRY FARM,  
INC.,

*Defendant.*

Civil Action No. 18-8939 (KSH)(CLW)

**ORDER**

THIS MATTER having come before the Court on the report and recommendation (D.E. 128) of Magistrate Judge Waldor, recommending that this Court (1) strike the pleadings of plaintiffs CMC Food, Inc. ("CMC") and Michael Culley ("Culley"), including their affirmative claims and any answers to counterclaims, based on the failure of CMC, which as a corporation cannot litigate *pro se*, to retain replacement counsel after its counsel withdrew and the failure of Culley to prosecute this action; (2) enter default against CMC on the amended counterclaim filed by defendant Mitlisky Eggs, LLC ("Mitlisky Eggs"); (3) direct Mitlisky Eggs to move for default judgment, and (4) direct all defendants to meet and confer and report the status of the cross-claims; and

WHEREAS, the District Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge," 28 U.S.C. § 636(b)(1); *see also* Fed. R. Civ. P. 72(b)(3) ("The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions."); L. Civ. R. 72.1(c)(2) (district judge "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the Magistrate Judge," and "may consider the

record developed before the Magistrate Judge, making his or her own determination on the basis of that record.”); and

WHEREAS, plaintiffs were noticed directly by the only contact means made available to the Court that dismissal of their claims was being contemplated, *see Dunbar v. Triangle Lumber & Supply Co.*, 816 F.2d 126, 129 (3d Cir. 1987); and

WHEREAS, no party has filed objections to the report and recommendation, and the time for filing objections has passed; and

WHEREAS, defendants having advised the Court that if Judge Waldor’s report and recommendation is adopted, they do not intend to pursue the cross-claims (D.E. 129); and

WHEREAS, this Court has reviewed the record and given “reasoned consideration” to the report and recommendation and the dispositive legal issues discussed therein, *see EEOC v. Long Branch*, 866 F.3d 93, 99-100 (3d Cir. 2017); and

WHEREAS, the record fully supports the report and recommendation’s conclusion that plaintiffs’ claims must be dismissed and any response by CMC to the counterclaim against it must be stricken<sup>1</sup> based on CMC’s failure to retain counsel and Culley’s failure to prosecute, the latter of which satisfies the criteria set forth in *Poulis v. State Farm Fire & Cas. Co.*, 747 F.2d 863 (3d Cir. 1984); and

WHEREAS, defendants have indicated their intent to dismiss the cross-claims in the event the Court adopts Judge Waldor’s report and recommendation, and this order does adopt the report and recommendation,

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<sup>1</sup> As the report and recommendation notes, it does not appear that CMC ever responded to the amended counterclaim after the Court denied its motion to dismiss three of the four claims asserted in the amended counterclaim.

**NOW, THEREFORE, IT IS**, on this 31st day of March, 2025,

**ORDERED** that the report and recommendation (D.E. 128) is ADOPTED; and it is further

**ORDERED** that plaintiffs' complaint is DISMISSED; and it is further

**ORDERED** that CMC's answer, if any, to Mitlitsky Eggs' amended counterclaim, is STRICKEN; and it is further

**ORDERED** that if Mitlitsky Eggs wishes to pursue its amended counterclaim against CMC, it shall file a request for entry of default within 7 days after the date of entry of this order, and shall thereafter file its motion for default judgment within 7 days after default is entered; and it is further

**ORDERED** that absent timely submissions pursuant to the foregoing paragraph, the amended counterclaim will be dismissed; and it is further

**ORDERED** that defendants' cross-claims are dismissed; and it is further

**ORDERED** that the Clerk of the Court shall send a copy of this order to Michael Culley via email at [mculley@clbeggs.com](mailto:mculley@clbeggs.com).

/s/ Katharine S. Hayden  
Katharine S. Hayden, U.S.D.J